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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,010	02/03/2004	John Wesley Swafford JR.	11610.000095	4094
22908	7590	08/19/2009	EXAMINER	
BANNER & WITCOFF, LTD. TEN SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606			BUCHANAN, CHRISTOPHER R	
		ART UNIT	PAPER NUMBER	
		3627		
		MAIL DATE		DELIVERY MODE
		08/19/2009		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/772,010	SWAFFORD ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	CHRISTOPHER R. BUCHANAN	3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 May 2009.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3,4,6-14,16-22,24-36 and 41-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3,4,6-14,16-22,24-36 and 41-49 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/7/09, 6/24/09</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____.                         |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 4, 6-14, 16-22, 24-36, and 41-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mignault (US 6,269,285) in view of Ali (2005/0279722).

Regarding claims 1, 13, 17, 21, 26, 31, 34, 38, 41, 45, and 48, Mignault discloses a system for inventory management on a shelf including a pusher assembly (80, 82, Fig. 3), a locator device (102, Fig. 5, permanent magnet, col. 5 line 58+) to provide the position of the pusher assembly on the shelf (see abstract), a sensor assembly (84, 86, 88, etc., Fig. 3, col. 5 line 55+) to detect the position of the pusher assembly by scanning the locator device and determining a code (col. 6 line 37-40, logic output signals) based on the scanned signals and to transmit the code representative of the pusher position for further processing, and a processing device (136, computer) configured to receive the transmitted code (see abstract, col. 6 line 40+), wherein the processing device is configured to receive the transmitted code, provide notification concerning the position of the pusher assembly (product stack height, abstract, col. 6 line 21-54), and to order additional inventory in response to the received code (col. 3

line 43+, col. 6 line 48+). The system of Mignault does not show the pusher assembly position data to be processed to determine if there is a deviation in the inventory data, however, there is a variety of post-processing that could be performed on the pusher data and the particular post-processing performed would be a matter of design choice since it does not affect the nature or functioning of the invention and does not solve any stated problem or serve any particular purpose.

The system of Mignault differs from the claimed invention in that the locator device is not shown to be an indicia strip containing a pattern of bits.

Ali discloses a system for inventory management on a shelf including a pusher assembly (abstract, 26, Fig. 6, par. 75), an indicia strip containing a pattern of bits (40, encoder strip with vertical bars, Fig. 7, 8, par. 77-78) to provide the position of the pusher assembly on the shelf (abstract, par. 77-79), and a sensor assembly (46, 48, Fig. 8, par. 78-79) to detect the position of the pusher assembly by scanning the indicia strip.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Mignault so that the locator device is an indicia strip containing a pattern of bits, as taught by Ali, to provide a simple and effective optically-based means for determining the pusher assembly location which does not require adjustment when storing different sized items (par. 74, Ali). Furthermore, in the examiner's view the particular structure and design of the locator device on the pusher would be a matter of design choice since it does not affect the nature or functioning of the invention and does not solve any stated problem or serve

any particular purpose.

Regarding claim 3, wireless transmission is well-known in the art. Regarding claim 4, the sensor assembly and computer are connected over a network (see Fig. 6). Regarding claims 6-11, a variety of sensors and indicia strips are available having various features/designs and the particular selection would be a matter of design choice. Regarding claim 12, the computer receives data in real time. Regarding the remaining dependent claims, the features of the invention recited in these claims has already been addressed in the rejection above.

### ***Response to Arguments***

3. Applicant's arguments filed May 13, 2009 have been fully considered but they are not persuasive. Applicant argues that the Ali reference is improper prior art for the portion relied upon because the parent application (10/924,665; 2005/0040123) and provisional application (60/497,437) which provide the priority date do not disclose the feature relied upon in the rejection, i.e., an encoder strip included in the locator device. Applicant further argues that the prior art references do not disclose an indicia strip configured to provide a representation in a pattern reflecting the position of the pusher assembly, as claimed.

The examiner disagrees and stands by the rejection. The examiner points out that the parent application (2005/0040123) discloses an encoder strip (103) in Figures 5C to 5H and par. 52-60. The functioning and design of the encoder strip are described

in par. 52-60. Also, the provisional application ('437) discloses a variety of means that can be used in the locator device to determine the position of the pusher (see p. 5 par. b-c), including an electronic tape measure (shown in Figs. 4A-4E). In the examiner's interpretation, both applications disclose the relied upon feature of an encoder strip which is later described in more detail by the Ali reference (2005/0279722). Thus, the Ali reference ('722) used in the rejection has a valid priority date and constitutes proper prior art. Furthermore, the encoder strip of Ali (see Figs. 7-8) includes a pattern (vertical bars and contrasting bars described in par. 78) that reflects the position of the pusher assembly.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER R. BUCHANAN whose telephone number is (571)272-8134. The examiner can normally be reached on Mon.-Fri. 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. R. B./

Examiner, Art Unit 3627

/F. Ryan Zeender/  
Supervisory Patent Examiner, Art Unit 3627